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17 UNITED STATES DISTRICT COURT

18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19

20 MARK AARON HAYNIE, BRENDAN
21 RICAHRDS, THE CALGUNS
22 FOUNDATION, INC., and THE
23 SECOND AMENDMENT
24 FOUNDATION, INC.,

25

Plaintiffs,

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vs.

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28 KAMALA HARRIS, Attorney General
of California (in her official capacity),
CALIFORNIA DEPARTMENT OF
JUSTICE, CITY OF ROHNERT
PARK, OFFICER DEAN BECKER
(RP134) and DOES 1 TO 20,

29

Defendants.

Case No.: 3:10-CV-01255 SI

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Conference Date: September 6, 2013
Conference Time: 3:00 p.m.
Conference Place: Courtroom 10
450 Golden Gate Ave
San Francisco, CA
94102

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31 1. **Jurisdiction & Service** – The parties stipulate that the Court has subject
32 matter jurisdiction over the plaintiffs's claims and there are no issues
33 regarding personal jurisdiction or venue.

1 2. **Facts** – Mark Haynie was arrested once and Brendan Richards was arrested
2 twice for violations of California Penal Code § 12280(b)¹ [30605] – possession
3 of an unregistered assault weapon. In Brendan Richards’ case and with
4 regard to both arrests, police were in the process of investigating a
5 disturbance when they discovered several firearms in the trunk of Richards’
6 car. Based upon the officers’ belief that these firearms violated the California
7 Assault Weapons Control Act (“AWCA”), Richards was arrested on the spot.
8 Forensic experts employed by the California Department of Justice, however,
9 reviewed the weapons and issued opinions that the firearms did not violate
10 the AWCA. Subsequently, the Sonoma County District Attorney’s Office
11 dismissed the criminal charges. Defendants City of Rohnert Park and Officer
12 Dean Becker contend that the arresting officers had probable cause to make
13 the arrest for violation of the AWCA.

14 3. **Legal Issues** –

- 15 a. Is the California Assault Weapon Statutory (and Regulatory) Scheme
16 unconstitutionally vague and ambiguous?
- 17 b. Was the constitutionality of the AWCA clearly established law at the
18 time of Brendan Richards’ arrests?
- 19 c. Do plaintiffs have standing to sue the City of Rohnert Park for
20 injunctive relief relating to the enforcement of the AWCA? See, *City of*
21 *Los Angeles v. Lyons*, 461 U.S. 95.
- 22 d. Given the totality of the circumstances known to the arresting officers,
23 would a reasonably prudent person have concluded that a person in
24 possession of a firearm similar in most respects to an illegal assault
25 weapon, yet equipped with a small bullet button, was in violation of
26 the AWCA? (For probable cause standard, see *Grant v. City of Long*

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28 ¹ California has renumbered its Deadly Weapon Statutes effective January 1, 2012. The
old numbers are cited and the new numbers are bracketed.

Beach, 315 F.3d 1081, 1085.)

e. Was the legality of an assault rifle equipped with a bullet button clearly established law at the time of the arrest?

f. Finally, is California Penal Code § 12031(e) [25850(b)] unconstitutional on its face? Does this statute provide police officers with probable cause to search a vehicle without a warrant? Was the constitutionality of this provision clearly established at the time of the search?

4. **Motions** – Defendants California Department of Justice and Kammala Harris filed a Motion to Dismiss which this court granted with leave to amend on October 22, 2011. Defendants City of Rohnert Park and Officer Dean Becker filed a Motion to Dismiss on December 23, 2011. The Court granted in part and denied in part, with leave to amend in an order filed on July 30, 2012. Plaintiffs and Defendants anticipate filing Motions for Summary Judgment.

5. **Amendment of Pleadings** – Pursuant to an Order of the Court, the Plaintiffs have filed an Amended and Consolidate Complaint on September 4, 2012 (Doc #65). This is the current operative Complaint. However Plaintiffs Ploghorowitz and Defendants City of Cotati and Officer Andrew Lyssand have been dismissed from this action.

6. **Evidence Preservation** – Not applicable in this case.

7. **Disclosures** – Plaintiffs served their FRCP 26 Disclosures on all defendants on February 17, 2012 via email. The remaining parties agree to make their FRCP 26 disclosures pursuant to this Court’s orders.

8. Discovery

a. Plaintiffs will take the following discovery.

i. Document Request.

ii. Interrogatories.

1 18. **Trial** – As noted above, plaintiffs are prepared to discuss a bench trial in
2 conjunction with, or in lieu of, a Rule 56 Motion. Should plaintiffs' civil
3 damages claim proceed beyond motion practice, the City of Rohnert Park and
4 Officer Dean Becker request a jury trial on those issues. Defendants expect a
5 five-day trial at this time.

6 19. **Disclosure of Non-Party Interest Entities or Persons** – None known at
7 this time.

8 | RESPECTFULLY SUBMITTED.

9 | Date: August 30, 2013

Date: August 30, 2013

/s/

12 || Date: August 30, 2013

13 /s/
14 Robert W. Henkels
County for Defendants
City of Rohnert Park & Becker

**ATTESTATION FOR COMPLIANCE WITH GENERAL ORDER 45 AND
LOCAL RULE VIII.B.**

18 I, Donald Kilmer, declare under penalty of perjury under the laws of California
19 and the United States that I have in my possession e-mail correspondence from
20 Ross Moody and Robert Henkels that the content of this document is acceptable to
all persons required to sign the document. I declare that this document was signed
in San Jose, CA on August 30, 2013.

/s/
Donald Kilmer of
Attorney for Plaintiffs